



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**CONSOLIDATED PETITIONS NO. 56, 58 & 59 OF 2019**

**BETWEEN**

NUBIAN RIGHTS FORUM.....1<sup>ST</sup> PETITIONER

KENYA HUMAN RIGHTS COMMISSION.....2<sup>ND</sup> PETITIONER

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS....3<sup>RD</sup> PETITIONER

**AND**

THE HON. ATTORNEY-GENERAL.....1<sup>ST</sup> RESPONDENT

THE CABINET SECRETARY, MINISTRY OF INTERIOR

& CO-ORDINATION OF NATIONAL GOVERNMENT.....2<sup>ND</sup> RESPONDENT

THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR

& CO-ORDINATION OF NATIONAL GOVERNMENT.....3<sup>RD</sup> RESPONDENT

THE DIRECTOR NATIONAL REGISTRATION.....4<sup>TH</sup> RESPONDENT

THE CABINET SECRETARY, MINISTRY OF INFORMATION,

COMMUNICATION & TECHNOLOGY.....5<sup>TH</sup> RESPONDENT

THE SPEAKER, NATIONAL ASSEMBLY.....6<sup>TH</sup> RESPONDENT

KENYA LAW REFORM COMMISSION.....7<sup>TH</sup> RESPONDENT

**AND**

CHILD WELFARE SOCIETY.....1<sup>ST</sup> INTERESTED PARTY

AJIBIKA SOCIETY.....2<sup>ND</sup> INTERESTED PARTY

MUSLIMS FOR HUMAN RIGHTS INITIATIVE.....3<sup>RD</sup> INTERESTED PARTY

HAKI CENTRE.....4<sup>TH</sup> INTERESTED PARTY

LAW SOCIETY OF KENYA.....5<sup>TH</sup> INTERESTED PARTY

INFORM ACTION.....6<sup>TH</sup> INTERESTED PARTY

**BUNGE LA WANAINCHI.....7<sup>TH</sup> INTERESTED PARTY**

**INTERNATIONAL POLICY GROUP.....8<sup>TH</sup> INTERESTED PARTY**

**TERROR VICTIMS SUPPORT INITIATIVE.....9<sup>TH</sup> INTERESTED PARTY**

**RULING NO. 5**

The judgment in the Consolidated Petitions herein was set for delivery today. However, two intervening factors, namely the enactment of the Data Protection Act, and the receipt of a letter dated 26<sup>th</sup> November 2019 from Mr. Mwendwa, the counsel for the 6<sup>th</sup> Respondent, seeking directions from the court in light of the said enactment, made delivery not possible. In addition, as the Data Protection Act was enacted after reserving judgment, this Court is guided by the provisions of section 60 of the Evidence Act that obliges it to have judicial notice of all written laws. The Court therefore considered it prudent that parties be given opportunity to comment on the Data Protection Act, as it may be relevant to some of the issues raised in the Petition herein. Judgment was thus deferred, and the Court directed that a hearing be set for today to receive submissions from the parties on the Act, and to set a new judgment date.

We have considered the submissions received from the parties, who, in summary, have requested the Court to take judicial notice of the Data Protection Act, and set an early judgment date. There we differing opinions as to what is meant by taking judicial notice of the Act, which is a matter that this Court will address, and decide on in its judgment.

Notwithstanding the emerging consensus on the way forward, this Court needs to address concerns raised by the Petitioners and Interested Parties supporting the Consolidated Petitions on what was termed as a unilateral communication with the Court by Mr. Mwendwa, and the perception caused thereby. It is this Court's view and finding that there is no basis to make any such adverse inferences from the said communication by Mr. Mwendwa for three reasons.

Firstly, it is on record that this Court in a letter by the Deputy Registrar dated 26<sup>th</sup> November 2019 expressly directed Mr. Mwendwa to copy and inform all the parties of his communication with the Court, and returned to him his earlier letter in which he had not done so. Mr. Mwendwa subsequently wrote another letter dated 21<sup>st</sup> November 2019, that was copied to all parties which was admitted to the Court record.

Secondly, the content of Mr. Mwendwa's letter of 21<sup>st</sup> November 2019 was to inform this Court on the enactment of the Data Protection Act, which is a public document, and seek directions on the same. This Court in this respect has power and discretion to give directions under Article 159 of the Constitution, which obliges this Court to provide substantive justice, and Rule 3 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 which provides as follows:

**“3. (1) These rules shall apply to all proceedings made under Article 22 of the Constitution.**

**(2) The overriding objective of these rules is to facilitate access to justice for all persons as required under Article 48 of the Constitution.**

**(3) These rules shall be interpreted in accordance with Article 259(1) of the Constitution and shall be applied with a view to advancing and realising the— (a) rights and fundamental freedoms enshrined in the Bill of Rights; and**

**(b) values and principles in the Constitution.**

**(4) The Court in exercise of its jurisdiction under these rules shall facilitate the just, expeditious, proportionate and affordable resolution of all cases.**

**(5) For the purpose of furthering the overriding objective, the Court shall handle all matters presented before it to achieve the—**

**(a) just determination of the proceedings;**

**(b) efficient use of the available and administrative resources;**

**(c) timely disposal of proceedings at a cost affordable by the respective parties; and**

**(d) use of appropriate technology.**

**(6) A party to proceedings commenced under these rules, or an advocate for such party is under a duty to assist the Court to further the overriding objective of these rules and in that regard to—**

**(a) participate in the processes of the Court; and**

**(b) comply with the directions and orders of the Court.**

**(7) The Court shall pursue access to justice for all persons including the—**

**(a) poor;**

**(b) illiterate;**

**(c) uninformed;**

**(d) unrepresented; and**

**(e) persons with disabilities**

**(8) Nothing in these rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”**

Lastly, Mr. Mbarak, who was holding Mr. Mwendwa’s brief, has unreservedly apologised to the Court and to the parties for any omission in complying with this Court’s directions to copy and serve the parties in time. We are therefore not persuaded that there was any intentional misconduct on Mr. Mwendwa’s part.

In the premises, judgment in the Consolidated Petitions herein is now reserved for **30<sup>th</sup> January 2020 at 3.00 pm.**

Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 18<sup>TH</sup> DAY OF DECEMBER 2019**

**P. NYAMWEYA**

**MUMBI NGUGI**

**W. KORIR**

**JUDGE**

**JUDGE**

**JUDGE**